

PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.

January 11, 2008

Tom Clotfelter,
P.O. Box 444
Rancho Santa Fe
CA 92067

DRAFT DECISION OF THE DIRECTOR
Habitat Loss Permit

APPLICATION NUMBER: HLP xx-xxx, ER 04-08-042

ASSOCIATED PERMIT(S): TM5406RPL2

NAME OF APPLICANT: Tom Clotfelter

DESCRIPTION/LOCATION OF LOSS:

The Habitat Loss Permit would authorize the take of 1.10 acres of Southern Maritime Chaparral - Coastal Sage Scrub Mix habitat as shown on the attached plot plan dated _____ on file with DPLU as Habitat Loss Permit Number HLP XX-XXX.

The project proposes a single lot subdivision for the construction of six detached condominium units with associated grading for pads and driveways. The site is 1.95 acres in size. Access would be taken from Paseo Arbolado and Camino Selva. The project site is located west of Via De La Valle and northeast of Camino Selva in the Rancho Santa Fe neighborhood of the San Dieguito Community Planning Area, in the unincorporated portion of San Diego County. The project location is indicated on the attached USGS map.

A Biological Technical Report was prepared by Vincent N. Scheidt. The site primarily consists of a southern maritime chaparral / coastal sage scrub mix. This ecotonal mix

covers 1.10 acres and is highly disturbed. The remainder of the site qualifies as urban/developed lands from adjacent roads and residential uses. Within the maritime/coastal sage scrub mix are three sensitive plant species: Nuttall's Scrub Oak (*Quercus dumosa*), Decumbent Goldenbush (*Isocoma menziesii decumbens*), and California adolphia (*Adolphia californica*).

The site is mapped as "developed" on the MSCP Habitat Evaluation Model and is not located in or near proposed North County PAMA. In addition, there is no potential for California gnatcatcher to occur on site. All of the on-site biological resources will be considered impacted through implementation of the project. Mitigation shall occur at a 3:1 ratio with the purchase of southern maritime chaparral in the Deer Canyon Mitigation Bank. This mitigation land also contains the three sensitive plant species (Nuttall's scrub oak, decumbent goldenbush, and California adolphia) that will be impacted as a result of the proposed project.

DECISION:

The Director of Planning and Land Use has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) concur with the Director's approval, by the either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFG, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for the loss of the above-described coastal sage scrub habitat (see attached Habitat Loss Exhibit) and incidental take of the California gnatcatcher for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDFG. If the loss of habitat, as authorized by this Habitat Loss Permit, has not occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of coastal sage scrub habitat expires.

This Habitat Loss Permit cannot be relied upon for the clearing, grading or removal of any vegetation until a valid Grading Permit, Clearing Permit or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal. Furthermore, use and reliance upon this Habitat Loss

Permit cannot occur until all of the requirements as specified within the “Conditions of Approval” section of this permit have been satisfied.

CONDITIONS OF APPROVAL:

The following condition is being placed on TM5406RPL2. For the final Habitat Loss Permit, the list of conditions will be modified to require satisfaction of all conditions prior to use and reliance on the HLP.

- A. Prior to approval of grading or improvement plans, and prior to approval of the Final Map, the applicant shall: [DPLU, FEE]
 - 1. Provide for the approval of the Director of Planning and Land Use evidence that 3.30 acres of Southern Maritime habitat credit has been secured in a mitigation bank. The secured habitat must include the following sensitive plant species: Nuttall’s scrub oak (*Quercus dumosa*), Decumbent goldenbush (*Isocoma menziesii decumbens*), and California adolphia (*Adolphia californica*). Evidence of purchase shall include the following information to be provided by the mitigation bank:
 - a. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
 - b. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
 - c. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
 - d. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.
- B. Cause to be placed on grading and/ or improvement plans and on the Map, the following: “Restrict all brushing, clearing and/or grading such that none will be allowed during the avian breeding season. This is defined as occurring between February 15 and August 31. The Director of Planning and Land Use may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, that no nests are present in the vicinity of the brushing, clearing or grading.” [DPLU, FEE]:

ENVIRONMENTAL FINDINGS:

- A. CEQA Findings

To Be Determined with Final HLP

B. FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project, and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993):

Finding 1.a: The habitat loss does not exceed the five percent guideline.

The proposed project will impact 1.10 acres of southern maritime chaparral - coastal sage scrub mix and no pairs of California gnatcatcher (*Polioptila californica*). Approved coastal sage scrub losses as of the date of February 26, 2007 and including this approval, for the entire unincorporated County, outside the boundaries of the Multiple Species Conservation Program (MSCP), are presented in the following table:

Unincorporated Area Coastal Sage Scrub Cumulative Losses	
Total loss allowed under five percent guideline:	2953.30 acres
Cumulative loss of Coastal sage scrub to date:	1113.98 acres
Net loss due to this project:	1.10 acres
Total cumulative loss:	1115.08 acres
Remaining loss under five percent guideline:	1838.22 acres

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

The 1.95-acre project site supports 1.10 acres of highly disturbed southern maritime chaparral / coastal sage scrub ecotonal mix. The remaining 0.85-acres qualify as developed land due to roads, landscaping, and walls. The disturbed nature of the habitat is the result of surrounding development and on-site activities such as the construction of an earthen berm and placement of drainage facilities. The surrounding areas support rather dense development with single and multi-family residences and public roads occurring on all sides. As such, the disturbed remnants of native habitat on site have no connection to other areas of natural vegetation. Based on a review of aerial photographs, the site is very isolated from other habitat areas and would not even serve as a stepping stone. Moreover, the County's MSCP Habitat Evaluation Model shows that the nearest high-value area is 0.25-mile north of the site. Dense development occurs between the high-value area and the project site. Therefore, the southern maritime chaparral / coastal sage scrub habitat on site has no connectivity to higher value districts or preserve lands. As such, no on-site preservation of the habitat is considered appropriate and no such preservation is proposed. Instead,

this loss of habitat will be mitigated via the purchase of high-quality southern maritime chaparral in a County-approved mitigation bank off site.

The loss of 1.10 acres of southern maritime chaparral / coastal sage scrub habitat on the Clotfelter property will not preclude connectivity between areas of high value districts. The habitat on site would not be categorized as having a large size for the region and is not in close proximity to a core patch of coastal sage scrub. The existing isolated patch of habitat does not have connectivity to larger stands of coastal sage scrub within the project vicinity. Furthermore, there are no known corridors or linkages within the immediate vicinity of the proposed project. Given that the subject property is surrounded by relatively small parcels with residential and commercial uses, this site is suitable for development without on-site preservation. The off-site purchase of 3.30 acre-credits of southern maritime chaparral within a County-approved Mitigation Bank will better contribute to the preservation and monitoring of large connected areas of high-quality native habitat in the region.

Therefore, impacts to 1.10 acres of southern maritime chaparral / coastal sage scrub habitat on the Clotfelter property will not preclude connectivity between areas of high habitat values. In accordance with CEQA and the NCCP, impacts to 1.10 acres of southern maritime chaparral / coastal sage scrub habitat are considered significant. However, the off-site mitigation will reduce such impacts to a level below significance.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

Besides the 1.10 acres of southern maritime chaparral / coastal sage scrub habitat contained on the property, the project site does not support any sensitive habitats. The rest of the project site consists of development and disturbance from surrounding residential uses. No sensitive wildlife species were identified on the property during biological surveys conducted by Vincent Scheidt and Anita Hayworth (Scheidt 2006; Hayworth 2002). Focused surveys for California gnatcatcher were not completed because it was determined that there is a low potential for this species to occur on site (Scheidt 2006). Three sensitive plant species were identified on site: Nuttall's Scrub Oak (*Quercus dumosa*), Decumbent Goldenbush (*Isocoma menziesii decumbens*), and California adolphia (*Adolphia californica*). It was determined that preservation of these species on-site was not a viable option due to the disturbed nature of the site and on-going edge effects. Therefore, high-quality habitat located in an off-site mitigation bank would benefit the populations of these locally sensitive plant species.

The proposal to develop condominiums on the property will directly impact a total of 1.10 acres of native habitat lands consisting of southern maritime chaparral / coastal sage scrub mix. The habitat loss will not preclude or prevent the

assemblage of a subregional NCCP plan. The County's MSCP Habitat Evaluation Model maps this site as "developed" and the draft map for the North County MSCP shows a designation of "developed/authorized" for this property and the surrounding properties. Due to the site disturbance and surrounding development, this area is considered to be more suitable for development and would not provide any benefit to a future preserve system. Off-site mitigation for the 1.10 acres of southern maritime chaparral / coastal sage scrub habitat impacts is required at a 3:1 ratio within a County-approved mitigation bank. The off-site preservation and monitoring of high-quality southern maritime chaparral within larger blocks of contiguous habitat will contribute to the goals of NCCP subregional planning efforts.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

The proposal for condominiums on the Clotfelter property minimizes the loss of native habitat lands by developing a property that is already partially disturbed and surrounded by residential and commercial uses. Only 1.10 acres of southern maritime chaparral / coastal sage scrub habitat will be impacted by the proposed development. The habitat on site is considered to have "lower potential for long-term conservation" pursuant to the NCCP Logic Flow Chart. This determination is based on the findings that the habitat occurs in a small, isolated patch that has been heavily disturbed by existing land uses.

The off-site purchase of more valuable habitat at a 3:1 ratio is required as mitigation for the minor loss of disturbed southern maritime chaparral / coastal sage scrub habitat that may result from the development. No other sensitive habitats will be compromised, either directly or indirectly, by the project. Therefore, potential impacts to habitat have been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 the NCCP Process Guidelines.

Finding 2 The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

No listed species are known to occur on the project site. Three sensitive plant species would be affected by the project: Nuttall's scrub oak, decumbent goldenbush, and California adolphia. These species are County Group A and Group B rare plants and require in-kind mitigation. However, they are not listed as endangered or threatened on the federal or state endangered species lists and are not subject to specific recovery plans. Mitigation for the loss of habitat and sensitive species shall occur at a 3:1 ratio with the purchase of southern maritime chaparral in the Deer Canyon Mitigation Bank. This mitigation land also contains known populations of Nuttall's scrub oak, decumbent goldenbush, and California adolphia.

Due to the dense residential and commercial uses surrounding the Clotfelter property, there is a low potential for any sensitive wildlife to occur on site. Given the existing site conditions, it has been found that the proposed development will not appreciably reduce the likelihood for survival and recovery of listed species in the wild.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

The project will require grading plans for development of the detached condo units. The issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Game and U.S. Fish and Wildlife Service and approval by the County of San Diego of a Grading Permit, Clearing Permit, or Improvement Plan is required prior to the clearing of any of the southern maritime chaparral / coastal sage scrub supported on the project site. No state or federal permits other than those mentioned above are identified as being required at this time. Construction and/or land use modification will not commence until all appropriate permits have been issued. The project has been found to be in conformance with Section 86.104 of the San Diego County Code. As such, the anticipated loss will be incidental to "otherwise lawful activities".

NCCP FLOWCHART

1. Is natural vegetation present? **Yes.**
2. Is Coastal sage scrub present? **Yes.**
3. Is Coastal sage scrub the most dense in the subregion? **No.**
4. Is the land close to high value district. **No.**
5. Is the land located in a corridor between higher value districts. **No.**
6. Does the land support high density of target species? **No.**

Based on the NCCP Logic Flow Chart, the quality of habitat supported on the Clotfelter project is defined as having lower potential for long-term conservation.

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in

order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

A.1

NOTICE: The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

NOTIFICATION TO APPLICANT: The County of San Diego hereby notifies the applicant that State law (S.B. 1535) effective January 1, 2007, requires certain projects to pay fees for purposes of funding the California Department of Fish and Game. If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the "effective date" being the end of the appeal period, if applicable), a certified check payable to "County Clerk" in the amount of \$1,926.75 for a project with a Negative Declaration, or \$2,656.75 for a project with an Environmental Impact Report. These fees include an authorized County administrative fee of \$50. The fees (excluding the administrative fee) may be waived for projects that are found by the Department of Planning and Land Use and the California Department of Fish and Game to have a no effect impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

DEFENSE OF LAWSUITS AND INDEMNITY: The applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any

claim, action or proceeding against the County, its agents, officers and employees to attack, set aside, void or annul this approval or any of the proceedings, acts or determinations taken, done or made prior to this approval; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense.

JUDICIAL REVIEW TIME LIMITATIONS: The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning and Land Use on _____. A copy of this decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

DEPARTMENT OF PLANNING AND LAND USE
ERIC GIBSON, INTERIM DIRECTOR

BY:

Glenn Russell, Interim Deputy Director
Regulatory Planning Division

GR:MF:

Attachments

Habitat Loss Exhibit dated _____
USGS Map
Biological Letter Report by Vincent N. Scheidt

cc: To be provided at issuance of Habitat Loss Permit